

APPROVED: 4/20/09

**MINUTES OF THE
CONSOLIDATED ZONING BOARD OF APPEALS
OF THE
TOWN OF HIGHLANDS AND VILLAGE OF HIGHLAND FALLS
MARCH 16, 2009**

A regular meeting of the Zoning Board of Appeals was held in the Court Room, Town Hall, Highland Falls, New York, on Monday, March 16, 2009, at 7:00 P. M.

THERE WERE PRESENT:

Board Members:

David Weyant, Chairman
Tim Doherty
Jack Jannarone
Tony Galu
James Miller

Absent: Ray Devereaux and Tim Donnery

Alyse Terhune, Attorney

ALSO PRESENT:

John Hager, Building Inspector, Mervin R. Livsey, Jr., Deputy Supervisor, Andrew Hennessy, Michael J. Sandor, Gregg Lawless, Glen Moyer, Chris Moyer, Rose Ott, Anne Hidalgo, Mitch Troyetsky, Elaine Graf-Radenberg, Melvin Esrig, Stella Esrig, Daniel J. Bloom, Kare Bryant, Robert Bryant, Leah Madrid, Ned Kopald, Michael Perry, and Bobbie Greene.

The meeting was called to order by the Chairman, at 7:00 P. M., with the Pledge to the Flag. It was noted that a quorum was present.

MR. WEYANT: I will open the March 16, 2009 Consolidated Board of Appeals for the Town of Highlands, and note that all members are present with the exception of Mr. Devereaux and Mr. Donnery. The first matter on our agenda is approval of the Minutes of February 17, 2009. Are there any changes or corrections to the minutes?

MR. DOHERTY: I saw nothing of note.

A motion was made to approve the February 17, 2009 Minutes.

Motion: Mr. Doherty Seconded: Mr. Miller Approved

MR. WEYANT: I would like to note that I gave all of you tonight a copy of a flyer sent to us from the Orange County Municipal Planning Federation and I circled a meeting on April 27, 2009 about zoning. We have never been, since I have been

on this Board, to any sort of educational meeting. I would like us to consider going to this. It is a Monday, the last Monday of April.

MR. DOHERTY: I definitely think it is worth going to.

MR. WEYANT: I agree and we can all get together to go. I will be calling you about it to make sure the date is clear.

The first matter on tonight's agenda is **Gregg Lawless, 1027 Route 9W, Fort Montgomery, NY., Request for a Use Variance**. You may recall that Mr. Lawless has been here through a Public Hearing at the last month's meeting. We discussed his interpretation of the lot in Fort Montgomery on which he would like to park cars. I don't see Mr. Lawless here tonight; however, he did submit material which I believe all of you have. This is additional material that you requested regarding his application now for a use variance. You will recall at last February's meeting we agreed that the way the Code is written, that we were not going to interpret it differently and instead leave it the way it is written. As a result, he would have to apply for a use variance in order to park cars there and use that lot for storage, without a building. I wish he was here. He specifically gave us financials, which is what we wanted. Alyse, if you could review for us the criteria for a use variance.

MS. TERHUNE: A use variance shall be granted if the Applicant can show that if the use variance were not granted, he would be harmed substantially in terms of economics.

MR. LAWLESS arrived.

MS. TERHUNE: The Board, at the last meeting, asked Mr. Lawless to provide this Board with proof that he would suffer an economic hardship if the use variance was not granted. Also, the Applicant must demonstrate that the variance would be unique to this property, and that the variance, or the application, is not something that is substantially in the zone in all other properties. In other words, that the variance he is asking for is used for this property and it does not affect other properties in the neighborhood or District.

Also, that if the Board grants the use variance, it will not adversely affect the character of the neighborhood, and finally, that the Applicant did not create the hardship. These are the four (4) issues that this Board needs to consider when it determines whether or not to grant the use variance. I understand that the Applicant has submitted financial information.

MR. WEYANT: Yes, can you review this, Mr. Lawless.

MR. LAWLESS: From the last meeting you asked me to produce what the financial burden would be. Obviously, it is a big piece of property. The proposed cost to erect a building would be about \$150,000. The tax liability was roughly around \$10,000 per year, county and school tax. Currently, my monthly expenses on that piece of property are about \$750 a month, taxes, landscaping maintenance, my mortgage, and I also have liability there owed on the piece of property, which was a mortgage held by my Father. The initial costs are there of

what the property cost me. I had submitted copied checks for what was paid for the property and my costs and the improvements that I put into the lot recently to clean it up and make it more aesthetically pleasing. Projected income is very little but the potential of what I would estimate roughly for people renting for a trailer/boat for the winter on a per monthly basis. Currently, I receive no income on the property. That is the position I am in.

MR. WEYANT: Presently you are not receiving any income?

MR. LAWLESS: I am not.

MR. WEYANT: Any questions gentlemen, or further discussion? I have looked over these numbers and seem satisfied with what he has presented as the criteria we requested.

MR. GALU: I think he should be entitled to do something with that piece of property besides paying taxes on it.

MR. WEYANT: He has shown the hardship.

MR. GALU: Does the Building Department have anything to add.

MR. HAGER: I don't, as far as the estimated building costs?

MR. GALU: You are not going to put a building on it?

MR. WEYANT: No, that is not his intention. He wanted to show us the fact that there would be hardship and what the overall costs would be. These are the numbers that we asked for.

MR. DOHERTY: Is there a curb cut for this property?

MR. LAWLESS: Yes there is one.

MR. DOHERTY: John, he will have to agree to all the codes that pertain to that lot, including keeping it free of debris, is that correct?

MR. HAGER: Everyone has to abide by the Code. In this particular case, he will need the variance and he needs to go to the Planning Board to submit a site plan for the proposal.

MR. WEYANT: This will go back to the Planning Board?

MR. HAGER: Yes.

MS. TERHUNE: This Board can condition any approval it wants. For example, at the first appearance of the Applicant, he talked a little about not allowing abandoned vehicles on the site. If this Board chose to approve this use variance, it could condition it on that or other reasonable conditions. If the Applicant goes back to the Planning Board, the Planning Board could also condition any approval.

MR. DOHERTY: I am not familiar with the Town Code. If Mr. Lawless has a vehicle on the property that is untagged and someone is storing it there, isn't it required to be covered with a car cover?

MR. HAGER: The current Code lists the definitions of abandoned vehicles. Included in the definitions is a vehicle stored outdoors with no tags.

MR. DOHERTY: No tags.

MR. HAGER: If it had no tags, it would be a violation.

MR. DOHERTY: I think that Mr. Lawless has the right idea for the property. My main concern is that I really don't want to see tires piled up, which falls under Town Code. If you get notices on that you would have to act on that.

MR. LAWLESS: I think John can attest to that. I did do that prior.

MR. DOHERTY: I remember it was a mess before you got it.

MR. LAWLESS: We cleaned the lot pretty well. There is not going to be an abandoned car there that someone owns on the lot.

MR. DOHERTY: I fully understand that, but with the Code and an untagged vehicle.

MR. LAWLESS: Yes, I understand the definitions.

MR. WEYANT: I think we are ready for someone to make a motion.

A motion was made to grant a Use Variance to Mr. Lawless.

MS. TERHUNE: The Board finds that the Applicant has two economic hardships by competent financial information; that the hardship is unique to the property; that there are not a lot a lots in that area that don't have cars on it; and that the Board finds that by granting the variance, it will not have undo adverse impact to character of the neighborhood.

MR. WEYANT: No, not when you consider you have the Chevrolet Dealership there and the used car lot.

MS. TERHUNE: Also, that the hardship is not self created and that the Applicant was not the one that had to comply with the Code for creating the garage. He did not create this hardship. Is it the Board's pleasure to condition the variance?

DR. PERRY: Would I be able to comment?

MR. WEYANT: No, we have had the Public Hearing on this.

MS. TERHUNE: Is it the Board's pleasure to condition this variance?

MR. WEYANT: I don't think we have to. I think the Planning Board can, if they decide to.

MR. DOHERTY: I really don't think it is necessary with the multiple codes that stipulate what can and cannot be done there.

Motion: Mr. Jannarone Seconded: Mr. Doherty Approved

With a Roll Call Vote:

Mr. Galu	Aye
Mr. Miller	Aye
Mr. Doherty	Aye
Mr. Jannarone	Aye
Mr. Weyant	Aye

Mr. Devereaux	Absent
Mr. Donnery	Absent

MR. WEYANT: The Use Variance has been approved and the applicant will go back to the Planning Board.

MR. LAWLESS: Thank you for your time.

MR. WEYANT: Next we have Krzysztof Grubecki, 264-270 Main Street, Highland Falls. Mr. Andrew Hennessy, Engineer, is here representing Mr. Grubecki. We are involved with two (2) variances. You need an area variance for a lot per dwelling unit and a height variance.

MR. HENNESSY: Correct.

MR. WEYANT: At our last meeting you outlined the plans as to what you want to do.

At 7:15 P. M. the Public Hearing was opened.

MR. WEYANT: I have for the record a Notice of Publication of this Public Hearing in the News of the Highlands, an Affidavit of Mailing, and an Affidavit of Posting and Signage. All of the formalities are properly done.

Mr. Hennessy, please hold up your right hand. Do you solemnly swear that the information provided herein to be accurate and true to the best of your ability?

MR. HENNESSY: I do.

MR. HENNESSY: We are proposing a mixed use new construction of a three - story building in the empty lot three doors down, which is between numbers 264 and 270 Main Street, in the B-1 Business Zone. We are seeking two (2) area variances. The first one is for lot area per dwelling unit. The Zoning Code calls for 2,500 square feet of lot area per dwelling unit. In this case we are asking for a variance of 6,632 feet to accommodate the four (4) units. We are also asking for a variance of the 35 foot height limit. We are proposing to construct the building at 43 feet. It would be my client's hope to have relatively tall ceilings and the rooms

- we are looking at 10 foot. Plus the style of the building and the parapet brought us up to 43 feet. That pretty much explains it.

MR. JANNARONE: What is it without the parapet?

MR. HENNESSY: The roof level is at 35 feet. There is no layering above 35. It is just the parapet. You can see the way it works its way up.

MR. WEYANT: We are talking approximately 8 feet that you need the variance for?

MR. HENNESSY: Correct.

MR. WEYANT: Is there anyone here in the audience that would like to speak for Mr. Hennessy's application for these two variances? If so, I would like them to speak specifically to the variances before this Board.

MRS. BOBBIE GREENE: Compared to the building next to it, what are the heights?

MR. HENNESSY: I don't have an exact number. I was speaking with the Building Department about any data on the heights of existing buildings, but there doesn't appear to be any information available.

MRS. GREENE: How deep is it?

MR. HENNESSY: Showing on the map, the sidewalk, the building is here, it is more in line with the smaller building.

MRS. GREENE: There is 8 feet beyond that.

MR. HENNESSY: Yes. It will be back quite a bit.

MRS. GREENE: It will be shorter than the Ward building?

MR. HENNESSY: Yes.

MR. WEYANT: Is there anyone else?

DR. MICHAEL PERRY: Do you propose to build four units on this property and how much of a variance?

MR. HENNESSY: How large are these units or how much of a variance is needed on the lot area?

DR. PERRY: Both

MR. HENNESSY: There are two types of units. One is 917 square feet and other type unit is 926 square feet. Plus they both have a 100 square foot balcony attached. It is a little bit over 1,000 usable space. As far as lot area, we are

seeking a variance of 6,632 feet. The requirement would be 10,000. Does that answer your question?

DR. PERRY: Yes. How much is used for the building?

MR. HENNESSY: I don't know if I have a lot coverage; 69% coverage by the building. Zoning allows, I believe 80%.

MRS. GREENE: Standing on the sidewalk where are the balconies?

MR. HENNESSY: They are going to face the parking lot.

MR. WEYANT: Anyone else? Hearing none, I would ask for a motion to close the Public Hearing.

At 7:24 P. M., a motion was made to close the Public Hearing.

Motion: Mr. Doherty Seconded: Mr. Miller Approved.

MR. WEYANT: I want to point out to members of the Board that this application still has to go to Orange County Department of Planning for approval.

MR. DOHERTY: Is that due to the proximity to Main Street?

MR. WEYANT: Yes, due to the proximity to Main Street. They have 30 days to act on that. We are not going to be able to make a decision on this tonight. This application will be held over until April 20, 2009. Whatever decision we do make, it will go back to the Planning Board. It will be held over. You are set Mr. Hennessy.

MR. HENNESSY: Thank you.

MR. WEYANT: Our last Public Hearing tonight will be regarding the application put in by Anne Hidalgo and Roseanne Ott, which is an appeal for a Certificate of Occupancy, dated November 10, 2008. I want to note for the record that I have an Affidavit of Publication for tonight's Public Hearing in the News of the Highlands, an Affidavit of Posting and Signage, and an Affidavit of Mailing. All formalities are taken care of.

Before we begin, I would like to go over some ground rules for this Public Hearing. I am going to allow each person to make a presentation. There will be no rebuttals by any party. I am considering putting a time limit on this. I will see how it goes. Also, I would ask that any person here that would like to submit to this Board any information based on what we hear tonight, to please do so in writing no later than March 31. If there are things that you feel should be brought to this Board, as a result of presentations given tonight, please submit them by the end of March. All members of this Board, with the exception of Mr. Devereaux, have been to this property and have seen it. They have seen the Hidalgo property and the Bryant property and have listened to both sides and have an idea of what they are talking about. When you speak on this, please try to stay within the items that this Board must discuss involving the alleged failure

to comply with Town Code. I want to keep everything above board here; I do not want any arguments, or any discussions between parties that might hinder our meeting.

The first thing I would like to do is to have John Hager, our Building Inspector for the Board's behalf, to review for us why we are here and what started all this. Review with us the matter at hand.

At 7:30 P. M., the Public Hearing was opened.

MR. WEYANT: Mr. Hager, please hold up your right hand. Do you solemnly swear that the information provided herein to be accurate and true to the best of your ability?

MR. HAGER: Yes, I do.

MR. WEYANT: If there are any maps you would like to put up, please do so.

MR. HAGER: Not at the moment.

The project that we are going to be talking about is a recent subdivision for four lots of a parcel that was subdivided in 2004.

Hillcrest Road 4-34-68 Subdivision Time-line (provided by John Hager 3-16-09)

September 2, 2004 – Subdivision approval (plans stamped and signed by Planning Board)

March 27, 2006 Building Permit issued for lot #2 Hidalgo/Ott (blasting permit issued 4/21/06)

December 11, 2006 Building Permit issued for lot #3 Moyer (blasting permit issued 3/4/07)

June 11, 2007 Moyer filed application for Planning Board approval of driveway change

August 20, 2007 Moyer Planning Board approval granted for driveway change

December 28, 2007 Building Permit issued for lot #4 Bryant (blasting permit issued 11/20/07)

March 26, 2008 Foundation location as-built plan for Bryant lot #4 received

March 28, 2008 Advisory Notice issued to Bryant regarding changes and amendment requirement

April 3, 2008 Bryant directed to apply for Planning Board "Site-Plan" approval

April 7, 2008 Bryant submitted Planning Board site-plan application & fees

April 15, 2008 Written complaint received from Hidalgo/Ott regarding location of Bryant house

April 29, 2008 Denial of permit amendment & Stop Work Order issued to Bryant (pending PB approval)

May 7, 2008 Received "notice of claim" dated 4/17/08 from Hidalgo/Ott

May 23, 2008 Bryant Building Permit amendment issued and Stop Work Order rescinded

June 14, 2008 Bryant submitted letter requesting their Planning Board application be withdrawn

August 22, 2008 Hidalgo/Ott residence (lot #2) issued a Certificate of Occupancy by Building Department

September 17, 2008 Building Department received Complaint regarding safety concerns of retaining wall

September 23, 2008 Inspection performed of retaining wall, by Town Engineer & Building Department

September 23, 2008 Received Petition regarding court action by Hidalgo/Ott against Bryant and Town

September 29, 2008 Town of Highlands personnel appeared in OC Supreme Court

September 30, 2008 Building Department issued letter to Bryant requesting Engineer's report on wall

November 10, 2008 Bryant residence issued a Certificate of Occupancy by Building Department

November 12, 2008 Court action regarding Town dismissed by OC Supreme Court

January 09, 2009 Notice of Appeal of Certificate of Occupancy submitted to the Zoning Board of Appeals by Hidalgo/Ott challenging the Building Department's issuance of Bryant's Certificate of Occupancy

Additional comments were offered by Mr. Hager regarding the Moyer property requiring a modification of the Planning Board approval due to their desire to relocate the driveway. The Planning Board reviewed and approved a Site Plan application that the Moyers submitted. Mr. Hager also spoke of the initial determination that an additional Site Plan approval would be necessary for the Bryant's lot. The Building Department had consulted with the Town's attorneys, the Planning Board's attorney and the Town Supervisor with a decision made to direct the Bryants to apply for Site Plan approval. The deadline for submissions was near and the Bryants cooperated and submitted an application to the Planning Board. The building plans had been revised to the satisfaction of the Building Department and met the building and zoning codes, but the Bryants were denied the amendment to their Permit and issued a Stop Work Order pending Planning Board approval of their Site Plan application. Upon more careful consideration and additional consultation with the attorneys and Supervisor it was determined that the Site Plan approval was not required and the Permit was amended, Stop Work order lifted and the Bryants went back to work.

MR. WEYANT: Thank you very much, John for the timeline.

MR. DOHERTY: There was no action by the Planning Board?

MR. HAGER: No. There were two meetings on the matter before the Planning Board to begin the process. They did not complete that because the Applicant withdrew the application.

MR. WEYANT: Mr. Troyetsky, please hold up your right hand. Do you solemnly swear that the information provided herein to be accurate and true to the best of your ability?

MR. TROYETSKY: Yes, I do.

MR. WEYANT: Mrs. Hidalgo, please hold up your right hand. Do you solemnly swear that the information provided herein to be accurate and true to the best of your ability?

MRS. HIDALGO: Yes, I do.

MR. TROYETSKY: Thank you, Mr. Chairman. As you stated, this is the action brought by Mrs. Hidalgo and Mrs. Ott to revoke the Certificate of Occupancy, based upon the failure to comply with sections of the Town Code. Planning Board Site Plan approval that is required both for this size residence and in a situation where there is a substantial change in the subdivision plan which could affect the other property under Section 210.21G which may not have specifically set forth. I am not sure we set forth that section as well.

MS. TERHUNE: You did not.

MR. TROYETSKY: The decision was also based upon the fact that the height and setback requirements are not in compliance, screening requirements, and the environmental concerns have not been met due to the dangerous stone retaining wall that John spoke of. I have given you material on this and, if necessary, I will submit any material in writing, as requested. Rather than keep this going for too long, my client would like to make a presentation tonight. I will let Mrs. Hidalgo make her presentation.

MR. WEYANT: What I really meant for the plans in writing was for you or anyone else with questions after your presentation is made. Or if you have any points that you don't agree with or you want to change.

MR. TROYETSKY: No. Do you want me to correct a procedural statement that was made?

MS. TERHUNE: I would like you to amend your application to say the zoning code that you reference applies to site plans. He needs to amend his application because he is now requesting us to consider whether or not Section 210.21G applies, which was not originally requested.

MR. TROYETSKY: Correct

MR. WEYANT: What you are saying is his application form itself has to amended.

MS. TERHUNE: He can just write a letter to amend his application to add that.

At 7:43 P. M. a recess was called.

At 7:48 P. M. the meeting was reconvened and the Public Hearing reopened.

MR. WEYANT: I would like to note for the record, Mrs. Anne Hidalgo is going to make a Power Point Presentation and show some pictures to this Board regarding the application before us.

MRS. HIDALGO: Mr. Chairman, Members of the Board, Counselor, Ladies and Gentlemen, I want to thank you for your undivided attention. Before I make any comments, I want to make one thing perfectly clear; I am not asking you to force

my neighbors to tear their house down. That is not why I am here. I am asking you to revoke their Certificate of Occupancy. I hope to help you to arrive at your decision.

On January 23, 2008, I arrived at my property and noticed that there were boulders facing the ridge line on the top of the cliff. In the Restricted Deed Covenants, there is a section that calls for a buffer between both of the properties. I was concerned that this was the beginning of a berm. I contacted the Sellers and spoke with the Bryant excavators about the concern of these boulders at the top of the cliff.

On February 21, 2008, I had not heard anything back about the boulders by the surveyor, and I had observed that footings had now been poured and when I measured them, I noticed that they were 12 feet too close to the property line. The Building Department had not been informed of the change in location by the Bryants of these footings prior to concrete construction. The architectural drawings that the Bryants did submit to the Building Department said that a Building Inspector would be called out to inspect these footings prior to concrete. That did not happen. I informed the Sellers immediately that there was a violation. My builder discussed footings location with Bryants' excavator, and also mentioned footings to the Building Department, which had no idea that they had been poured at this point.

March 10, 2008, two weeks later: The Bryants have full knowledge of the improper location of those footings, yet construction continues. I retained an attorney who immediately faxed and FedExed written objection to Deed violation to sellers on March 13, 2008.

March 15, 2008, five days later: I observed foundation walls coming 6 feet higher out of the ground than the plans suggested. This is a very important slide. This slide shows the top of the foundation. The plans, as submitted, and subsequently the As Built Plans that were submitted later, show that this elevation is at 98 feet 11 ½ inches. I had it surveyed. The actual foundation is 104 feet 8 inches. Without any approval, this house has come shooting out of the ground and is now 5 feet 10 inches higher and over 10 feet too close to my property, and taller than originally submitted for Building Permit.

March 20, 2008, exactly one month after footings: The Bryants fully aware there is a problem. They have had a full month to contact us to work out some type of resolution. The foundation walls poured. Note concrete pump in left hand corner.

March 26, 2008: Foundation forms stripped. The foundation included two large windows and a door looking immediately over my property. I had further discussions with the Building Department regarding violation of Town Building and Zoning Codes regarding setbacks and building height.

March 28, 2008: The Building Department issued an Advisory Notice to the Bryants. There were several issues: Several conditions on the December 26, 2007 Building Permit not met. Field changes not on approved plan; foundation location plan indicates house is 10 feet closer to property line; Building

Department not notified of changes; and further, the Building Department states further construction is considered unapproved and Bryants are building at their own risk.

A review:

January 23, 2008	Issue with boulders
February 21, 2008	Footings poured and stripped; 12 feet too close to property line.
March 10, 2008	Foundation walls formed
March 15, 2008	Foundation walls 6 feet taller than originally approved
March 20, 2008	Poured foundation walls one month after footings
March 28, 2008	Advisory Notice informing Bryants building at their own risk

The Bryants were fully aware their construction is illegal. They had been talked to by the excavator, sellers, attorneys, and the Building Department. They proceeded.

April 2, 2008: Five days later, construction continues, they have ignored the Advisory Notice, the Deed Restrictions and the Town Codes. Multiple phone calls were made. Mrs. Hidalgo met with the sellers to try to work out an amicable solution.

We have an approved subdivision plan that Mr. Hager referenced. On this plan you will see there are notes general notes and zoning notes. Specifically on the zoning notes these notes referred to R-1-R residence. This map is filed with the County and approved by the Planning Board. The notes call for 2 ½ stories and talks about the setback requirement for the yard, and in the general notes on this plan states that a site plan approval is required by the Town of Highlands Planning Board for all lots in R-1-R Zone.

April 17, 2008: Paragraph G which my attorney mentioned earlier, is written as “An amendment is only required where the modifications or changes have a material and substantial impact on the balance of the site development plan and functioning of the development.” This is material and substantial. You can see that on this map. The orange reflects the house as it is today and the yellow is the Bryants’ property.

In summary: Lot 4 changes: Size nearly tripled: 98 feet wide versus 30 feet wide wall facing Lot 2. Setback cut in half: 33 feet versus 60 feet from Lot 2 house. Visual impact stunning: 98 feet wall runs entire length of Lot 2 usable space that I must stare at. This is material and substantial. The Building Department is correct in sending this matter to the Planning Board. There are multiple code violations here. Let’s call this what it is – this is a three-story home. I have shown you that what was required on the plan was a 2 ½ story home. You can see that there is a ground floor, a middle floor, and a third floor which had been submitted as an unfinished attic, complete with a pull down stair. The revisions that came in, well over a month after the Building Department asked for them, no longer had a pull down stair. They had a separate stairway entering the third floor loft space. They put in three massive dormers, two facing the river, one

facing north. This no longer reflected as unfinished on the plan submitted to the Building Department. The floor to ceiling, third floor to the roof peak, was now 14 feet 8 inches. The total square footage is over 1,400 square feet. There is no reasonable explanation, to have a storage attic space and a change of plan as dormers unless you plan to use that as the third floor. This is a picture of their home. You can see the ground floor complete with its own separate grand entry. You have the second floor living space, and now you have these three massive dormers. That is a three story home.

The Building Permit said that this was supposed to be a single family home. The revised plans show a kitchen complete with a sink and stove fitted for future and plumbed and ready to go for future. There is a separate bath and shower, as well as well as a separate laundry. There is a complete grand entry. What is interesting is their plans call for a north basement and a south basement. They have already divided it. The apartment square footage is 1,169 feet. You can see the entry with its own separate garage on the side of the house. This home is plumbed and fitted as a two family.

What constitutes the front of house? The Planning Board debated this and there was never any resolution on this matter. The Planning Board Zoning Code says: "The vertical distance measured from the average elevation of the finished grade along the side of the structure fronting on the nearest street to the highest point of such structures." This house exceeds the Zoning Code by 5 feet 6 inches. Zoning and Building Permit Violation: Foundation – 3 story house (southern elevation); as Built Plans reflect foundation at 98 feet 11 ½ inches elevation; actual foundation elevation is 104.8 feet. That is why the house exceeds the height restriction.

April 17, 2008/ April 21, 2008: The Bryants went before the Planning Board for approval of site plan. The Bryants were told to produce a landscape plan to the Planning Board for approval at upcoming Planning Board meeting on May 15, 2008. At issue obviously, were the boulders on the ridge. Over the weekend, the following Monday you can see the second layer of what is going to ultimately become a retaining wall already placed, despite the Planning Board's request they went ahead and started building it. Mr. Bryant supervised the entire project. They knew exactly what they were doing.

April 25, 2008: A letter from the Bryants' architect describing revisions. In this letter to the Building Department two things were noted: Rear of the house is out of the ground. The foundation of the basement is now fully out of the ground on the rear, and the first floor porch must now be supported on piers and posts. That house grew 6 feet taller and actual ground floor (formerly basement) now shows separate dwelling (plumbed for kitchen, baths, and separate entrance). The visual impact: "It is not Bryants' intention to raise the grades because it would require concrete retaining walls, so to reduce the visual impact to us we propose to plant trees and other indigenous landscaping." Ladies and Gentlemen, I am telling right now there is no landscape material that is 36 feet high that would reduce visual impact of this plan.

April 28, 2008: Seven business days after being told to submit a landscape plan for approval, the Bryants construct significant retaining wall and plant mature

evergreen trees. They violate yet another Town Code by killing the trees on the property line.

April 28, 2008: The Building Department rightfully denies request for amended Building Permit. They called up several issues: Planning Board approval of the site plan; survey map does not include elevations, topography, or grading; survey map does not include landscaping and earthen berm (per the deed restrictions); issue of overall height questioned; and location in regards to originally submitted plans. Given location plus grades/height at rear of house, the Building Department is unable to issue amendment to Building Permit. The Bryants must obtain a site plan approval from the Town Planning Board.

April 29, 2008: The Building Department issues a Stop Work Order.

May 8, 2008: The Bryants ignore the Stop Work Order and continue finishing roof and all interior framing. Water and sewage lines also brought in despite Stop Work Order. The water and sewage requires significant hammering and excavation work on the street.

May 15, 2008: Planning Board Meeting. Topics include: continued work despite Stop Work Order; which side of the house is the front of the house; what is actual building height; and landscape completed without approvals. Discussion concluded without resolution on what constitutes front of house and adjourned for further submissions.

May 23, 2008: The Building Department issues amended Building Permit. Karen Bryant withdraws application before the Planning Board.

May 29, 2008: Bryants' workers take a break and enjoy a view of us.

September 30, 2008: The issue of the retaining wall. The Building Department finally responds to my formal written complaint and sent a letter to Mrs. Bryant requesting Mrs. Bryant to provide report from licensed professional engineer regarding current retaining wall and proposed plans to correct deficiencies. As of March 12, 2009, (5 ½ months later) no such report had been filed. If we were not here for this meeting, there would never be a report.

July 9, 2008: A Report on Stability of Retaining Wall by an Engineer with a Ph.D. in Engineering/Geotechnical Engineer. It is his specialty, the earth, how it is drained, etc. He has been doing this for 39 years.

Paragraph One: Failure of wall “highly probable,” risk to people and property unacceptable.

Paragraph Two: “If retaining wall were to fail because of the movement of stones, then stone, debris, soils and trees could cause significant damage and danger to Hidalgo residence.”

Paragraph Three: Small stones can be expected to be pushed out and fall to the ground on Hidalgo property. Small stones are already out of the wall. There they are they have already started.

Paragraph Four: Water build up could cause wall to fail and drainage system required.

Paragraph Five: Backfilled soil (as much as 5 feet) killing existing trees and dead trees could fall in a windstorm.

Paragraph Six: Unacceptable, manmade hazard to the people and property some 13 to 16 feet below. Must be taken down and rebuilt with design prepared, signed and sealed by a professional engineer competent to design rubble retaining wall. Must be supervised and certified by design engineer.

Paragraph Seven: Evergreens planted behind the wall must be relocated so that roots do not dislodge stones going forward. Slide of windstorm results on a healthy tree was shown.

September 21, 2008: 2nd Report on Stability of Retaining Wall: Heavy rain on September 6 and 9 affected retaining wall; base of wall was 8-16 inches from property line and now only a “few” inches from property line; several smaller stones moved and fell on Hidalgo property; weathering already cracking larger stones; some larger stones have micro cracks that will further fracture; smaller stones leaving their voids caused larger stones to tilt, move, rotate and fill void of smaller stones; loss of stones cause soil to migrate by erosion; and soil erosion will create ongoing problems of maintenance of pool deck and limestone. What is even scarier is that these rocks can also fall down to the railroad tracks. It doesn't even look like a wall on the side that faces the railroad.

A retaining wall is a structure that holds back earth. Retaining walls stabilize soil and rock from down slope movement or erosion and provide support for vertical or near-vertical grade changes. A berm is a mound of earth with sloping sides that is located between areas of approximately the same elevation.

I have a professional engineer; he is a friend of mine. Geotechnical engineering is the branch of civil engineering concerned with the engineering behavior of earth materials. Geotechnical engineering includes investigating existing subsurface conditions and materials; determining their physical/mechanical and chemical properties that are relevant to the project considered, assessing risks posed by site conditions; designing earthworks and structure foundations; and monitoring site conditions, earthwork and foundation construction.

November 10, 2008: The Building Department issues Certificate of Occupancy.

I am not asking to tear the house down. I am asking you withhold the Certificate of Occupancy until my neighbors remedy all the problems that were created. That is all I am asking. While there is a house already there, and I see it, I know it is there better than anybody. You have to ask yourself a question, is it okay to step on the gas and break every single rule and violate every single Town Code, the Stop Work Order, is it okay to do that and hurry up and get to the other side and get your house built so you can say that the house is already built? Is that the precedent that you want to set for this town?

Thank you for your undivided attention to this matter.

MR. WEYANT: Mr. Troyetsky, will there be any further discussion?

MR. TROYETSKY: No.

At 8:10 P. M., a recess was called.

At 8:15 P. M., the meeting was reconvened and the Public Hearing was reopened.

MR. WEYANT: Gentlemen, I am going to call on whoever would like to speak next.

MRS. CHRISTINE MOYER, 6 Hillcrest Road.

MR. WEYANT: Mrs. Moyer, please hold up your right hand. Do you solemnly swear that the information provided herein to be accurate and true to the best of your ability?

MRS. MOYER: Yes, I do.

MS. TERHUNE: You are the neighbor?

MRS. MOYER: Yes. It is difficult to extemporaneously speak rationally, unemotionally and in a timely manner, so please forgive my reading of this presentation.

Statement read by Mrs. Christine Moyer:

My name is Christine P. Moyer and I live with my husband at 6 Hillcrest Road in the middle of the old Sheldon property. We moved here last April from Northern New Jersey after retiring and deciding to relocate near a viable military base. We are retired Coast Guard and have spent over 30 years “commuting” to W.P. to use the medical, commissary, and recreational resources. Our son grew up climbing the cannons at Trophy Point and visiting Keller’s ER for those pesky ear infections.

We traveled through Ft. Montgomery and Highland Falls monthly on our way to the Post and were drawn to the peaceful, mesmerizing nature of the Hudson River. It was a nostalgic return for me. As a child, my great grandparents owned boarding houses in Malden-on-Hudson and many summer nights were spent watching the river traffic and listening to the night trains. The era of these boarding houses is gone.

I feel this area is on the cusp of another era. As costs escalate in the bedroom communities of NYC, more migration north will occur and with it will come the demands for bigger, maybe better, and transferal of an existing life style found in the burbs. Don’t get me wrong. I truly miss the plethora of fine dining close to home and not having to go “over the mountain” to shop. But I realize the quality of life of a close knit neighborhood where neighbors take garbage cans in for each

other without being asked, garage doors can remain unlocked, folks smile and wave and if I don't see Mel Sullivan in his red truck I worry about him. Roy Hannawalt built our house on a promise and a hand shake. We both kept our end of the agreement and have become true friends.

What we are asking the Board and Town is not to forget its roots, but to grow appropriately. Allow for the future in a controlled, responsible way, following all river front codes, enforcing those codes for construction, height of dwelling, tree removal, placement of unregistered vehicles, etc., as they presently exist which will preserve the quality of life we all desire. Bigger isn't better when the aesthetics and quality of life of neighbors are affected. We support Ott and Hidalgo.

MR. WEYANT: Do you have a copy, so we could have it for the record?

MRS. MOYER: Yes.

MR. GLEN MOYER, 6 Hillcrest Road.

Statement read by Mr. Glen Moyer:

Just a few comments on the wall if I may. First on the issue of degree of concern. When anyone stands on our property and looks at the wall from the profile view, and then goes down to the Ott/Hidalgo property and looks up, it is pretty obvious that this is far more serious than a picket fence that is a foot too high. Rather, it has a potential to cause serious property or God forbid – personal injury when and if the boulders decide to obey the laws of gravity. I am estimating several of those boulders weigh over 2 tons.

Secondly, the timing of any needed remedy. Ott and Hidalgo have in my opinion been trying far longer than they should have to have this remedied.

I am asking the town to

1. Ensure a remedy is pre-approved.
2. That appropriate inspections be done during the process.
3. That a definite completion date be set ahead of time and complied with.

MR. WEYANT: Thank you. Is there anyone else that would like to speak?

MR. HAGER: For the record, with regard to the Stop Work Order mentioned by Mrs. Hidalgo. There were a few exceptions with the Stop Work Order, including allowing contractors to complete the roof and chimney and the allowance of installation of water and sewer piping, but no connection to the house, as the utility locations would not have changed even if the house location were.

MR. WEYANT: Thank you, John.

MR. DAN BLOOM, I represent the Bryants. With this Board's permission, I would like to introduce the Professional Engineer for the purpose of analyzing the

Notice of this particular Public Hearing in going through the Code Sections and subject matter this evening. His name is Michael Sandor. With the Board's permission, I would like him to address each and every one of those Code violations for the sake of the Board's input. When he has completed that, I would like the Board's permission to address the particular issue about the wall and why no further action has been taken in respect to the wall up to this point. If I may, Mr. Chairman, I would like to introduce Mr. Sandor.

MR. WEYANT: Spell your last name. You are an engineer.

MR. SANDOR: Yes, I am. What I think, Mr. Chairman is I will basically go through the Code to review the sections that were referenced in the letter of January 8, 2009, to the Planning, excuse me, I meant Zoning Board. Similar to the Pubic Hearing, I would imagine that is the same thing that was published in referencing those sections of the Code.

MS. TERHUNE: What you are addressing is the Notice of Public Hearing that appeared in the newspaper or this particular one?

MR. SANDOR: This particular one, to make it simpler. The first item Number I, Failure to obtain a site plan approval from the Planning Board of the Town of Highlands (The Planning Board is required pursuant to Section 210-21.) Section 210 is the Zoning Code of the Town of Highlands. Section 210-21, states that no Building Permit or Certificate of Occupancy shall be issued for other than a single family residence, a two-family detached residence, or a structure accessory, thereto until a site development plan has been approved by the Planning Board. The first paragraph says that it is other than a single-family home. In the Table of Use Regulations, Schedule I, there are exceptions that require site plan approval. In reviewing that, under the R-1-R Zoning District the single family detached dwelling is a permitted use, and there are some cases where site plan approval is required. For instance, in the R-4 Zone, a conversion of an existing single family into a two family, that, in fact, would require a site plan approval. I believe the Planning Board was correct in that this particular application or building did not require a site plan approval.

Item Number 2: Fail to comply with the height and setback restrictions of Section 210-13. There are height regulations, that being 35 feet. In review of the minor four lot subdivision, which is a filed map, approved on 9/2/04, there was clearly a discussion by the Planning Board as to what the various yards were. As a matter of fact, the property line or the common property line in dispute here, clearly says 20 foot side yards all along that portion of the Bryants' property on the side there.

MS. TERHUNE: Could you point that out. This is the subdivision filed map?

MR. SANDOR: Yes. Twenty foot side yard here. Clearly there had to be discussion at the Planning Board as to what the front yard was and what the side yard was. This Board reviewed a few variances for this subdivision.

MS. TERHUNE: You are saying that this ZBA granted variances for this subdivision?

MR. SANDOR: Yes. Clearly the front of this building would be the front yard, thus the definition of building height as relates to the Zoning Code, as defined in the definition portion.

Item Number 3: Fail to comply with landscaping and screening requirements of Section 210-13 (3). The problem is that the Code that I have does not have that particular paragraph. I will recite it again. It says that Section 210-13 (3) an environmental concerns and requirements of Section 210-13 (5).

Item Number 4: Violated the New York State Building Code. That is a section of the Building Code that talks about retaining walls, and our Attorney will discuss that a little later.

Article 101-1, 6, 7, and 10. That is another section of your Code. 101 is Erosion Code. 101-1 is the purpose, 6 is a definition, 7 is activities requiring a permit. Activities requiring a permit, A1 would be site preparation in a subdivision of land of two or more parcels, excavations which affect more than 200 cubic yards of material with any parcel or any contiguous area, stripping which affects more than 20,000 square feet of ground surface within any parcel or any contiguous area, grading which affects more than 20,000 square feet of ground surface within any parcel or any contiguous area, or filling which exceeds at total of 100 cubic yards of any parcel or any contiguous area. There are activities under B which are exempt from this permit regulation. That would be excavations for the basement and footings of single family houses and septic systems. I have looked at some of these numbers, and I believe that this particular parcel lot falls below all those thresholds, subtracting out, of course, the building and the foundation walls. The rest of the paragraph has to deal with the stone retaining wall and I will defer to the Attorney. What I did was go through the various Sections of the Code which were under scrutiny, and in my opinion, I believe that the Planning Board and the Building Department acted appropriately.

MR. WEYANT: Thank you, sir.

MR. BLOOM: Continuing what I said before I am going to address the issue of the berm and the retaining wall. The letter went out from the Departments quite appropriately, my client received it. Mr. Sandor has been retained. He has performed inspections and produced a report. It is his opinion, of course. The problem is at the present time, as has already been stated, this is not news out of class, and there was litigation here. Mrs. Hidalgo presented litigation to the Supreme Court against my client. It has been dismissed, it is on appeal. Until that appeal is decided, it is my advice to my client, and I believe the Attorney for the Town agrees with me on this issue, we don't want to do anything with that wall until that litigation potential is over so that we can then address the issue finally with the consent of the appropriate Town officials, specifically the Building Inspector, and if necessary, go back to the Planning Board.

MR WEYANT: There is an appeal of the decision throwing this out and is put in front of us?

MS. TERHUNE: As to the Building Permit. No. This is a separate application for this Board for interpretation regarding the Certificate of Occupancy.

MR. BLOOM: There is also other pending litigation in the Supreme Court. All the courses of action in that but one has been dismissed. I do want to call to this Board's attention that there was a very emotional appeal made here this evening. I would ask that you keep your minds open. Keep this in mind also, that if indeed, the situation were as dire as described to you this evening, and then ask yourself, why they did not file a petition with the Supreme Court the very first photograph they took for a temporary restraining order. Hasn't happened, did not happen, and has not happened so far, and in my opinion, it will not.

MR. WEYANT: Thank you. Is there anyone else?

MR. MELVIN ESRIG, 43 Royden Road, Tenafly, NJ. I am the engineer for Mrs. Hidalgo. I was the engineer for the reconstruction of the wall that failed on the Henry Hudson Parkway, a wall in the Bronx that failed, a wall on Long Island that failed, and rubble walls that have special problems. The objective of the Code, as I understand it, is the same as my requirement as a professional engineer. My requirement is to look after the health and safety of people. In this particular case, the Code in Article 101-7 (3) has a permit required for site preparation on slopes which exceed 1 ½ feet vertical rise in 10 feet of horizontal distance. In other words, if you have that kind of scale and if you want to build a retaining wall, then you are required to have a permit for that. In this particular case, the shape of the stone and the manner in which they were placed, was not building an engineer's wall, it was not a rubble wall of cemented materials. Piles of rocks are not stable for the long term. Your Code is trying to preserve the health and safety of people, in this case, down slope. A 9-foot high un-cemented rubble wall sitting next to a 13-16 foot near vertical slope is a rather dangerous situation. I believe in reading your Code that it is not permitted without some engineer responsibility, drawing, or professional engineer taking some responsibility and liability for it. It is your job as the Code defines it for the safety of the people.

MR. WEYANT: Thank you, sir. Are there any further comments from the audience? Is this a rebuttal, Mr. Bloom?

MR. BLOOM: No. I wanted to know if you would have the right to be notified of the amendment to this Notice of Meeting this evening as announced by the other Attorney.

MS. TERHUNE: I don't believe so.

MR. BLOOM: If we have an opportunity to see that and be able to respond after seeing that.

MS. TERHUNE: It is public record.

MR. WEYANT: Yes, you certainly can respond by the end of March as I said at the beginning of the meeting.

MR. NED KOPALD, 98 Roe Park, Highland Falls. The engineer for Mr. Bryant's client made reference to a front yard. Can you define front yard that portion of the house and the land facing the Hudson River.

MR. SANDOR: No sir, the front would be facing the private street. I would call that the rear yard which is the Hudson River side.

MR. KOPALD: The rear yard is the Hudson River side?

MR. SANDOR: That would be how I would interpret it.

MR. KOPALD: And the front yard faces Hillcrest?

MR. SANDOR: Yes.

MR. WEYANT: Anyone else? Hearing none, I would ask someone to make a motion that the Public Hearing be closed.

At 8:44 P. M., a motion was made to close the Public Hearing.

Motion: Mr. Doherty Seconded: Mr. Jannarone Approved

MR. WEYANT: I want to make a note for the record, having discussions with the Building Inspector, we found that this property is less than 500 feet from Route 9W; therefore, we have to notify Orange County Planning. We need their analysis also. We did not know that a month ago, but we know it now. There will be no decision by this Board tonight without that input.

MS. TERHUNE: I do have a few questions, but I will defer to the Board.

MR. JANNARONE: You referenced the slope that required a permit. What is the slope?

MR. ESRIG: As to construction of the retaining wall?

MR. JANNARONE: You gave some figures for every 10 or 12 feet.

MR. ESRIG: The Code requires that there be a permit for development of any slope that has a rise of 1 ½ feet in a 10 foot horizontal distance.

MR. JANNARONE: Does that property have a rise of more than 1 ½ foot?

MR. ESRIG: It certainly does. It has a vertical wall is between 2-9 feet high supported by these stones.

MR. JANNARONE: You are talking about the slope that the wall is actually built on?

MS. ESRIG: I don't know the slope that the wall it is built on.

MS. TERHUNE: Mr. Troyetsky, I have a couple of questions. I have prepared a referral to Orange County Planning 239 M. I do not seem to have a copy of the correction to your Application as regard 210-13, 3 and 5.

MR. TROYETSKY: I gave that to you. I will send it along.

MS. TERHUNE: It is not in my file. Make sure it is submitted officially to the Building Department. I would ask that you clearly identify exactly what you are asking this Board to interpret. I would like to go over it, so I understand it. In regards to Section 210-21, the site plan approval: What you are alleging is that that footnote on Schedule C applies.

MR. TROYETSKY: I am alleging that the amendment referred to in that footnote applies.

MS. TERHUNE: I see.

MR. TROYETSKY: You say the footnote – it says as amended on a certain date.

MS. TERHUNE: I understand. You are also asking this Board to interpret what is the front of the house so that it can then determine whether the house exceeds the height limits.

MR. TROYETSKY: Yes. As Mr. Hager correctly pointed out in the papers that he submitted, you take the definition, it is an average from one side to the other, the average height on the portion nearest the closest street. Mr. Hager also correctly pointed out that the street has to be a street used for public purposes, not a private street. That is the definitions in the Code.

MS. TERHUNE: You are suggesting that the front of the house is the side of the house that portion of the house that faces the Hidalgo's.

MR. TROYETSKY: Under the Code, yes absolutely.

MS. TERHUNE: You are asking this Board to determine the front of the house for the purposes of height.

MR. TROYETSKY: Yes.

MS. TERHUNE: I am unsure what jurisdiction this Board would have to interpret New York State Building Code or Town Code Articles 101 and the rest, since they are not Zoning Codes. This Board can interpret or vary Zoning Code only. Do you want to address that?

MR. TROYETSKY: I will submit something to clarify that.

MS. TERHUNE: At the last meeting, I believe my colleague asked you to address other issues.

MR. TROYETSKY: I can address them.

MS. TERHUNE: I would like to look at them, also. Thank you so much. John, I think it might be helpful to this Board if they could see some copies of maps filed in the Building Department, subdivision maps that were referred to by the Attorney and Mr. Sandor. That would be something that the Board should look at. Also, you had a map that showed the house location and the subdivision verses the As Built that showed your house as well.

John, you mentioned that originally the Town Attorney decided that perhaps site plan approval was required, and then the Planning Board was notified that on further investigation, it was decided site plan application was not required. Who made that determination?

MR. HAGER: The Building Department made the determination based on conversations with the Town's Attorney, the Planning Board's Attorney and the Town Supervisor.

MS. TERHUNE: Could you briefly describe on second glance, why you interpreted the footnote as not applying?

MR. HAGER: First I have to point out I did not initially issue the building permit; my predecessor did in December 2007. That was the last lot that was available. The other two lots also were issued building permits without Site Plan approvals. I got into this after the fact. When the question came up, Mr. Armstrong was of the opinion that any requirement for site plan approval had been addressed at the time of subdivision review, that included site plan type of improvements. He verbalized to me that he had checked with the Planning Board Chairman at the time and was told that Building Permits could be granted. So that is the way we handled it until the attorney for the Planning Board mentioned foot note #5, and we studied it and initially took his advice and asked the Bryants to apply and again, it was kind of a hurried decision because the meeting deadline was looming and the house was under construction and we didn't want the applicant to lose a month waiting to get on an agenda. So, they complied which bought some time to really look into the code and we realized that footnote doesn't show up on the other tables and that the interpretation by the Planning Board may be different than the Building Department. The decision was made to issue the Bryants their amended permit and there was now no reason for them to seek Planning Board approval so the application was withdrawn.

MS. TERHUNE: The second decision was made by you?

MR. HAGER: Yes, in consultation with the former Building Inspector, Attorneys and the Supervisor.

MS. TERHUNE: That is all the questions I have. Mr. Troyetsky, I apologized for not getting that amendment that you sent me.

MR. TROYETSKY: I know that the Moyers had to have a site plan before they built their house.

MS. TERHUNE: Before you got the Building Permit and built the house?

MR. MOYER: Yes.

MR. HAGER: I have dates for the permits issued for the Moyer Lot: For the Moyer lot - December 11, 2006, Application to the Planning Board was June 11, 2007, Approval was August 2007.

MS. TERHUNE: Does the Board have a copy of that?

MR. HAGER: Not at this time.

MS. TERHUNE: They should, it would be easier than reading the minutes.

MR. HAGER: The Moyers did seek approval from the Planning Board for site plan on the driveway and there was no stop work order issued to stop the work on that house.

MR. DOHERTY: The only site plan approval that was requested for the Moyers was for the location of the driveway or for the house itself?

MR. HAGER: I was not involved at the time. I am not quite sure of the application process, but I believe more than just the driveway was reviewed. The driveway change is what triggered the Planning Board review.

MR. TROYETSKY: Because it was discussed with my clients as well whether or not Site Plan approval was required. It was stated to them by the Planning Board that since there was nothing substantial or material done by them Planning approval was not required. If they had done something they would have been required.

MR. HAGER: I analyzed similar to what they did. What I found was the house on the Bryants' lot was relocated 26.4 feet closer to the Hidalgo lot line. The largest movement for the total distance was a 62 foot change. The Moyer Lot had a change of 35 feet away from the Bryant lot line. The maximum was a change of 53 feet. On the Hidalgo lot the house was 46 feet further from than the Bryant lot line and there was a maximum change of 78 feet. My analysis of that is that the changes that were done on the location of the Bryant house were no more substantial than the changes for the Hidalgo house.

MS. TERHUNE: I think that the Hidalgos maintain not so much a change in the location of the house, but the change in the house itself. However, it all comes back to this Board's determination whether site plan approval is needed. There is a lot to consider. This Board needs to take the time to do so. You may ask further questions of the Applicant now or at the next meeting.

MR. WEYANT: Obviously, we have to go to the next meeting because of Orange County Planning and the fact that this Board is not going to vote on this matter tonight.

MR. JANNARONE: This brings up another issue besides Orange County Planning. On the other side is the railroad. Has the railroad been notified?

MRS. HIDALGO: Yes. It falls within the 500 foot radius.

MS. TERHUNE: It falls within the 500 foot radius of the railroad, but this Board does not have the responsibility to notify the railroad.

MR. JANNARONE: I have a little problem with the status of the report on the retaining wall. It was taken to eternity almost that the argument was that the theater is on fire, but it is under litigation so don't put the fire out. There is a safety issue involved in all of this. I urge us not to be prolonging this forever and ever because there is a safety issue. The argument that we should not do anything because of litigation strikes me as the wrong approach to take on something like this.

MS. TERHUNE: The issue of safety regards the wall. As I sit here tonight, I am not convinced that this Board has any jurisdiction or authority over that retaining wall. It would be the Building Inspector and the Building Department that would be addressing that issue. Unless this Board or Counsel can convince me differently, that would be my advice to this Board. I think what the Bryants are saying is that it is their intention to wait until the conclusion of litigation before addressing the issues with the wall. This Board can only interpret the Town of Highlands' zoning code, not the New York State Uniform Fire and Building Code or non-zoning provisions of the Town of Highlands Code. I will wait to see what the applicant's counsel has to say about that, but that is my initial analysis.

MR. WEYANT: This Board will meet on April 20, 2009. We have 62 days from today. We will hold over until April 20.

At 9:07 P. M., a motion was made to adjourn the meeting.

Motion: Mr. Doherty Seconded: Mr. Miller Approved

Respectfully submitted,

Fran DeWitt
Recording Secretary

**The next Zoning Board of Appeals meeting is
Monday April 20, 2009**